

**\*OGC Has Reviewed\***

Approved For Release 2002/03/28 : CIA-RDP78-03721A000200010038-6

C O P Y of Legislative Counsel Memorandum commenting on BOB Informal Comments on Agency Retirement Legislation, Set Forth in Memorandum of 17 September from Mr. Smith to Mr. Amory

1. BOB preliminary review of the detailed draft of CIA retirement legislation which was drafted for the House Armed Services Committee gave rise to several comments. Each is discussed briefly in the order in which it appears on the 17 September memorandum. The headings are those used in the 17 September memorandum.

Miscellaneous Benefits:

a. "...Also included is one provision not in the Foreign Service Act which would authorize the Agency to provide orientation and language training to members of families of employees prior to overseas assignment. Approval of this section would by specific legislative language endorse an administrative practice which has been conducted by CIA for several years under general authority contained in the CIA enabling act."

Orientation and language training for members of Foreign Service families is authorized at section 701 of the Foreign Service Act, as amended, 22 USC 1041. In the past, this Agency has undertaken such training only in part, in selected cases, and not as an administrative practice under the general authority contained in the CIA enabling act.

Retirement System:

a. As indicated by Mr. Smith, annual reports to the Congress on the condition of the CIA retirement fund and estimates of appropriations for financing, as provided for the Foreign Service at section 862 (22 USC 1102) of the Foreign Service Act, is not required in the Agency bill. Such information would be provided periodically to the Armed Services Committees in accordance with arrangements to be made for such reporting with those Committees.

b. BOB would interpret section 271 regarding the recall of annuitants to active duty as differing from section 871 (22 USC 111) of the Foreign Service Act in that they feel the language used in the CIA draft implies that a refusal by an annuitant to return to duty would terminate benefits under the Agency retirement system.

The language used is essentially identical to the language of section 871 of the Foreign Service Act. There is no intent one way or the other on the part of the Agency to determine this question under the present section. It would be the Agency position that specific legislative authority would be required before the Agency could deny an annuitant the benefits provided under a system requiring contributions by the participants.

c. "CIA's draft contains a provision (section 273), not in the Foreign Service Act, which explicitly states that any Agency employee who might be retired under the provisions of CIA's retirement system would not be barred from further Federal employment."

The language used in this section is substantively identical to section 520(c) of the Foreign Service Act.

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COPY OF Legislative Counsel Memo on BOB Comments - Continued

Comments:

a. Under the heading Comments and after noting that the detailing of the provisions of the retirement system removed much of the flexibility of the short version which would have permitted CIA to establish detailed arrangements for the system through administrative regulations, it was noted that one potential difficulty involves security. "Inasmuch as the...retirement system include(s) the career operative or case officer employee whose association with the Agency is closely guarded, the involvement of the Treasury Department in the "maintenance of the fund" and the "preparation of estimates for the annual appropriation to the fund" set forth in new sections 202 and 261, may go further than is compatible with good security practices."

Although additional merit may be established for this argument, present information would indicate that the handling of such matters by Treasury, although requiring the services of knowledgeable individuals, do not appear to provide a security hazard any greater than that encountered in the continuing liaison maintained with the Civil Service Commission under the Civil Service Retirement Act. Just what features might give rise to additional hazard are not apparent at this time.

b. It is suggested that the wording of section 202 which now reads "The Secretary of the Treasury shall maintain a special fund known as the CIA Retirement and Disability Fund, referred to hereafter as the Fund," be amended to read "There is hereby established in the Treasury of the United States a separate fund known as the CIA Retirement and Disability Fund, hereafter referred to as the Fund," in order to kill any doubt that the Treasury's role is restricted to a depository one.

Such a change in wording would be worthwhile.

c. With regard to section 261, which directs the Secretary of the Treasury to prepare estimates of the annual appropriation required for the Fund, and section 281(b) which directs the Secretary to prescribe mortality tables for purposes of computing certain benefits, BOB would recommend that these sections be written to provide that the functions be performed by the Director of Central Intelligence because of the extent of knowledge of CIA employees and programs which is required in determining questions of disability.

The Agency probably would not take exception to this recommendation although the procedures as established under the Foreign Service Act and provided by sections 261 and 281(b) have worked satisfactorily through the years in the administration of the Foreign Service program.

d. It is noted in the report that the effect of section 262 which requires the Secretary of the Treasury to invest money deposited to the Fund, is at cross purposes with the Secretary's important function of minimizing the interest payments on the public debt. It is suggested that in order to avoid this problem, the investment responsibility be replaced by a directive to the Secretary to make available certain public bond issues for the investment of the Fund's moneys.

COPY OF Legislative Counsel Memo on BOB Comments - Continued

The Agency would take exception to this recommendation. The section as drafted is substantively identical to section 863 of the Foreign Service Act. From the Agency point of view, the integrity of the Fund is of paramount consideration in establishing the retirement system.

e. The Bureau recommends that a provision be included in the draft bill (see section 252(c)(1) ) to authorize CIA to withdraw its matching contribution from Civil Service for transfer to the new retirement fund whenever an employee previously covered under Civil Service is transferred to the system.

Information and advice available to the Agency indicates withdrawal of the employee contribution from Civil Service on transfer to the Foreign Service system has not been accomplished, nor is it required or authorized by the Foreign Service Act. It will be necessary therefor to meet again with the Civil Service Commission on this matter. Withdrawal of employee contributions from Civil Service and transfer of the monies to the Agency Retirement Fund is basic to the proper establishment of the Fund.